

HERMAN G. BODEWES  
R. MARK MIFFLIN  
DAVID A. HERMAN  
CREIGHTON R. CASTLE  
CHRISTOPHER E. SHERER  
KERRI A. DOLL

MOLLIE M. TOWNSEND  
STEVEN A. MILBURN  
MATTHEW R. TRAPP  
JASON E. BROKAW

OF COUNSEL:  
ROBERT S. COHEN  
JOHN L. SWARTZ  
RONALD W. PERIARD

# GIFFIN WINNING COHEN & BODEWES, P.C.

A T T O R N E Y S   A T   L A W

*Please reply to:*  
POST OFFICE BOX 2117  
SPRINGFIELD, ILLINOIS 62705-2117

TELEPHONE (217) 525-1571  
FACSIMILE (217) 525-1710

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(1921-2013)

Illinois Liquor Control Commission  
Attn: Richard Haymaker  
100 W. Randolph, Ste. 7-801  
Chicago, IL 60601

Re: **Retail Warehousing (Rule 100.250)**

Dear Mr. Haymaker:

Recent discussions and comments before the Illinois Liquor Control Commission (the "Commission") were directed toward "retail warehousing."

The general term "retail warehousing", or the technical term known as "alternate delivery sites" basically refers to the ability or right of a retail licensee to transfer alcoholic liquor to another retail licensee.

The Illinois Liquor Control Act (ILCA) neither authorizes nor permits a retail licensee to either sell or transfer alcoholic liquor to another licensee. The Commission, from the inception of the Act, has consistently interpreted the Act to prohibit retail licensee transfers.

## **HISTORICAL BACKGROUND**

The Commission, when enacting a series of Rules (Currently Section 100.250), adopted Rule 25. The following represents the full text of the Commission's initial Rule prohibiting retail warehousing:

"Rule 25. Transfer of Alcohol. The holder of a retail license for the privilege of selling alcoholic liquors at retail at the premises specified in such license, for use or consumption, is hereby restricted to such sale from the licensed premises only and is not permitted to sell or transfer such alcoholic liquor to any other licensed premises."

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The Commission, as was its practice, periodically reviewed its Rules. In 1977-78 the Commission (Industry participation was included) amended several of its Rules, but reaffirmed Rule 25 without amendment or modification. In 1999 the Commission amended Rule 25 (Restated as Section 100.250) by adding the following sentence: "This Section does not apply to transactions not in the ordinary course of business, such as a business closure, if prior approval is given by the Commission."

In 1999, House Bill 137 was introduced in the Illinois General Assembly for the purpose of granting retail licensees the ability to establish for wine and spirits "alternate delivery sites". However, those provisions in House Bill 137 were stricken in the Illinois Senate and House Bill 137 when enacted did not contain or authorize "alternate delivery sites."

A review of the legislative records reflects no further attempts have been made by the Illinois General Assembly to authorize or otherwise permit retail warehousing or any form of alternate delivery sites for retail licensees.

#### **THE ILCA - AN AUTHORIZATION LAW**

The interpretation that the ILCA is an authorization law, namely that which is not authorized is prohibited is accepted and recognized by both the courts and the Commission. The basis for the interpretation is Section 2-1 of the ILCA, which in substance provides as follows:

"No person shall manufacture, bottle, blend, sell, barter, transport . . . except as permitted by Section 6-29 of this Act or except as otherwise specifically provided in this Act; . . ." (Emphasis added) (235 ILCS 5/2-1)

The Court, in People vs. Select Specialties,<sup>1</sup> adopted the State's argument that the ILCA is an authorization law by stating as follows:

"The State argues the Act prohibits what it does not permit. . . . The Act must expressly permit the actions of the defendants in this case or they are in violation of the Act. There is no express permission for their conduct, and we conclude they violated the Act. . . ." (Emphasis added)

The above interpretation applies to the conduct or activity referred to as "retail warehousing" or "alternate delivery sites." The ILCA clearly lacks express authorization for a retailer to transfer alcoholic liquors from its licensed retail premises to another licensed retail premises.

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<sup>1</sup> 317 Ill. App. 3d 538; 740 N.E.2d 543; 251 Ill. Dec. 462. Also see Goode vs. Thomas, 31 Ill.App.3d 674, 334 N.E. 2d 300.

Section 5-1(d) of the ILCA states that: “A retailer's license shall allow the licensee to sell and offer for sale at retail, only in the premises specified in the license, alcoholic liquor for use or consumption, but not for resale in any form. . . .” (Emphasis added) (235 ILCS 5/5-1(d)). Also see Section 1-3.17 (235 ILCS 5/1-3.17). The broadly defined term “sale” includes: “. . . any transfer, exchange or barter in any manner, or by any means whatsoever, . . .” (Emphasis added) (Section 5-1) (235 ILCS 5/5; 235 ILCS 5/1-3.2/2).<sup>2</sup>

The above combined ILCA provisions clearly do not authorize a retail licensee to transfer alcoholic liquors to a licensee. The above authorization is precisely limited to a retail licensee's sale from its licensed premises to the ultimate consumer for use or consumption and for no other purpose.

Illustrative of the ILCA provisions addressing or otherwise authorizing the sale or transfer of alcoholic liquor to licensees, is the language with respect to a distributor's license. The statutory authorization expressly states that: “a distributor's license shall allow the wholesale purchase and storage of alcoholic liquor and sale of alcoholic liquors to licensees. . . .” (Emphasis added) (235 ILCS 5/5-1(b)). This authorization or permission to sell “to licensees” is absent from retail licensee provisions.

## **CONCLUSION**

Commission Rule 100.250 is consistent with and correctly implements the ILCA.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.

  
Herman G. Bodewes

HGB:pa

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<sup>2</sup> The Court in People vs. Select Specialties (*supra*) recognized broad “sale language” of the Act by stating as follows: “The language of the statute is sufficiently comprehensive to include any person, natural or artificial, and any kind of a sale or device used in lieu of a direct sale.”